UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,126	10/31/2003	Arup Acharya	590.116	8951

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EXAMINER
SIKRI, ANISH

ART UNIT	PAPER NUMBER
2143	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/698,126	ACHARYA ET AL.
	Examiner	Art Unit
	ANISH SIKRI	2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2007*.

2a)☒ This action is **FINAL**.　　　　2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.

2.   Ascertaining the differences between the prior art and the claims at issue.

3.   Resolving the level of ordinary skill in the pertinent art.

4.   Considering objective evidence present in the application indicating

obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 to 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anerousis et al (US Pub 2004/0210670) in view of Klinker et al (US Pat 7,133,365).

Consider Claim 1, Anerousis et al disclosed a method of utilizing a general purpose computer for network route control (Anerousis et al, [0030]-[0031]), measuring relevant performance and availability metrics of said links (Anerousis et al, [0020]); and said computer directs network traffic to the best link based upon said relevant performance and availability metrics (Anerousis et al, [0018]-[0019]).

But Anerousis et al does not explicitly state the method comprising the steps of: establishing a connection between said general purpose computer and an arrangement for linking said computer to multiple internet service providers (ISPs).

Nonetheless, Klinker et al disclosed the method comprising the steps of: establishing a connection between a general-purpose computer and an arrangement for

linking said computer to multiple Internet service providers (Klinker et al, Col 1, Lines 30-39, Col 7 Lines 21-25, Klinker disclosed the use of best paths to multiple ISPs). Klinker et al's invention clearly discloses the use of multiple service providers on the network.

Both Klinker and Anerousis provide features related to network management. Therefore one of ordinary skill in the art would have been motivated to combine the teachings since both are within the same environment.

Therefore, it would be obvious to a person of ordinary skill in the art at the time of the invention was made to use of multiple service providers to the network, taught by Klinker et al in the method of Anerousis et al, for the purpose of having fail over network connections/redundancies for establishing reliable network transmission.

But Anerousis does not explicitly state the making a routing control decision at said general purpose computer prior to sending a packet comprising network traffic;

Nonetheless, Klinker et al disclosed the making a routing control decision at said general purpose computer prior to sending a packet comprising network traffic (Klinker, Col 22 Lines 63-67, Col 23 Lines 1-5, Klinker discloses on prior route selection).

Both Klinker and Anerousis provide features related to network management. Therefore one of ordinary skill in the art would have been motivated to combine the teachings since both are within the same environment.

Therefore, it would have been obvious to a person skilled in the art at the time of the invention was made to incorporate the use of prior route selection, taught by Klinker, in the system of Anerousis for the purpose of efficient route selection.

Consider Claim 2, and as applied to claim 1 above, Anerousis-Klinker disclosed the method wherein the said connection is accomplished through Multi-protocol Label Switching (MPLS) switched paths (Anerousis et al, [0075]). Anerousis et al clearly shows on the use of the method of incorporating the use of MPLS paths for implementing in IP tunnels.

Consider Claim 3, and as applied to claim 1 above, Anerousis-Klinker disclosed the method wherein the said connection is accomplished through Virtual Local Area Network (VLAN) tunnels (Anerousis et al, [0096]). Anerousis et al clearly shows on the use of the method incorporating the use of VLAN for implementing in IP tunnels.

Consider Claim 4, and as applied to claim 1 above, Anerousis-Klinker disclosed the method wherein the said connection is accomplished using Internet protocol (IP)-level tunnels (Anerousis et al, [0045]). Anerousis et al clearly shows on the use of the method of incorporating IP tunnels on the network.

Consider Claim 5, and as applied to claim 1 above, Anerousis-Klinker disclosed the method wherein the relevant performance and availability metric is network delay (Anerosis et al, [0064], [0106], [0123]). Anerousis et al clearly shows on the use of the method involving the metric - network delay, as it shows how it affects or improves the communication on the network.

Consider Claim 6, and as applied to claim 1 above, Anerousis-Klinker disclosed the method wherein the relevant performance and availability metric is network loss (Anerosis et al, [0064], [0106], [0123]). Anerousis et al clearly shows on the use of the method involving the metric – network loss, as it shows how it affects or improves the communication on the network.

Consider Claim 7, and as applied to claim 1 above Anerousis-Klinker disclosed the method wherein the relevant performance and availability metric is network throughput (Anerosis et al, [0064], [0106], [0123]). Anerousis et al clearly shows on the use of the method involving the metric – network throughput, as it shows how it affects or improves the communication on the network.

Consider Claim 8, and as applied to claim 1 above, Anerousis-Klinker disclosed the method wherein the relevant performance and availability metric is application-layer response time (Anerosis et al, [0064], [0106], [0123]). Anerousis et al clearly shows on the use of the method involving the metric – response time, as it shows how it affects or improves the communication on the network.

Consider Claim 9, and as applied to claim 1 above Anerousis-Klinker disclosed the method wherein the step of measuring relevant performance and availability metrics comprises making passive measurements (Klinker et al, Col 12 Lines 15-30, Klinker

disclosed on the use of passive measurements), wherein the general purpose computer

utilizes applications running on the general purpose computer to measure the relevant

performance metrics in an application-specific manner (Klinker et al, Col 12 Lines 15-

30, Klinker disclosed on how metrics are analyzed and by the passive measurement

devices).

Claim 10, has similar limitations as Claim 1, therefore it is rejected under the same rational as Claim 1.

Claim 11, has similar limitations as Claim 2, therefore it is rejected under the same rational as Claim 2.

Claim 12, has similar limitations as Claim 3, therefore it is rejected under the same rational as Claim 3.

Claim 13, has similar limitations as Claim 4, therefore it is rejected under the same rational as Claim 4.

Claim 14, has similar limitations as Claim 5, therefore it is rejected under the same rational as Claim 5.

Claim 15, has similar limitations as Claim 6, therefore it is rejected under the same rational as Claim 6.

Claim 16, has similar limitations as Claim 7, therefore it is rejected under the same rational as Claim 7.

Claim 17, has similar limitations as Claim 8, therefore it is rejected under the

same rational as Claim 8.

Claim 18, has similar limitations as Claim 9, therefore it is rejected under the

same rational as Claim 9.

Claim 19, has similar limitations as Claim 1, therefore it is rejected under the

same rational as Claim 1.

Consider Claim 20, and as applied to claim 1 above Anerousis-Klinker disclosed

the method wherein a label is utilized to direct the packet to a best link (Anerousis,

[0064], Anerousis disclosed that the routing protocol will select the best routes available

based on metrics).

Response to Arguments

Applicant's arguments filed 10/24/2007 have been fully considered but they are

not persuasive.

Applicant argues that the Anerousis does not teach selection of the best ISP but

rather server selection. In fact, Anerousis does indeed teach selection of the best ISP

link, it can be seen in Anerousis, [0064], as disclosed that the routing protocol will select

the best routes available based on metrics. It is common in the art to have a connection

to a server or a ISP, as both are network paths. Anerousis uses metrics to direct the

best path for establishing communication between the peers/devices/ISP's/etc.

Applicant argues that Anerousis does not contemplate the end user or general purpose

computer utilizing MPLS to select the proper first hop ISP. As Anerousis-Klinker

combination (with metrics and MPLS) in (Col 1, Lines 30-39, Col 7 Lines 21-25), Klinker

disclosed the use of best paths to multiple ISPs. Klinker et al's invention clearly

discloses the use of multiple service providers on the network. And Both Klinker and

Anerousis provide features related to network management. Therefore one of ordinary

skill in the art would have been motivated to combine the teachings since both are

within the same environment.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANISH SIKRI whose telephone number is 5712701783. The examiner can normally be reached on 8am - 5pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anish Sikri/
Examiner, Art Unit 2143

July 18, 2008

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2143